HAHN & HESSEN LLP
488 Madison Avenue
New York, New York 10022
(212) 478-7200
Mark T. Power (MP-1607)
Edward L. Schnitzer (ES-6299)

Counsel to Constellation Travel Service Limited

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re EOS AIRLINES, INC., Debtor.	Case No. 08-22581 (ASH) Chapter 11
CONSTELLATION TRAVEL SERVICE LIMITED, Plaintiff, - against - EOS AIRLINES, INC. and NATIONAL CITY BANK OF THE MIDWEST, Defendants.	Adv. Proc. No. 08- (ASH)

COMPLAINT FOR A JUDGMENT DECLARING CERTAIN ESCROW FUNDS NOT PROPERTY OF THE DEBTOR'S ESTATE AND DIRECTING THE RELEASE OF SAME

Plaintiff, Constellation Travel Service Limited ("Plaintiff" or "CTS"), by and through its counsel Hahn & Hessen LLP, hereby files this Complaint For A Judgment Declaring Certain Escrow Funds Not Property Of The Debtor's Estate And Directing The Release Of Same and, in support thereof, states:

NATURE OF THE ACTION

1. This is an adversary proceeding brought in the above-captioned bankruptcy cases pursuant to Part VII of the Bankruptcy Rules seeking a judgment declaring certain escrow funds not property of the Debtor's estate and an order directing the release of same.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(b).

3. This adversary proceeding has been referred to this Court pursuant to 28 U.S.C. § 157(a).

4. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), and (B).

5. Venue of this adversary proceeding is proper in this district pursuant to 28 U.S.C. § 1409(e).

PARTIES

6. On April 26, 2008 (the "Petition Date"), EOS Airlines, Inc. ("EOS" or the "Debtor") filed a voluntary petition (the "Petition") for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York.

7. CTS is a foreign charter operator that is incorporated in Trinidad and Tobago. CTS promotes charter flights between points in the United States and points in the Caribbean. Seats on these charter flights are sold to the general public directly or through other travel agencies. CTS is subject to the regulations of Title 14 - Aeronautics and Space, Part 380 - Public Charters, of the Code of Federal Regulations.

8. Upon information and belief, National City Bank of Northwest ("NCB") is a subsidiary of National City Corp., a Delaware corporation.

FACTS

9. On or about January 11, 2008, CTS and EOS entered into a Charter Aircraft Services Agreement (the "CAS Agreement") whereby EOS agreed to operate a series of public charter flights on behalf of CTS.

10. Pursuant to the CAS Agreement and the pertinent government regulations, including 14 C.F.R. § 380.34[1], CTS, Citibank, as CTS's depository bank (the "CTS Depository Bank"), and EOS entered into a Public Charter Depository Agreement which, *inter alia*, required all passenger funds to be delivered directly to the CTS Depository Bank.

11. Pursuant to the CAS Agreement and the pertinent government regulations, including 14 C.F.R. Part 212 and 380, EOS and NCB entered into an Air Carrier Depository Escrow Agreement (the "NCB Escrow Agreement") whereby NCB established an escrow account to hold charter passenger funds.

12. Upon information and belief, as of June 5, 2008, NCB was holding $409,280.59 of advance passenger payments which were transferred by CTS, through the CTS Depository Bank, to NCB, to be held in escrow (the "CTS Escrow Funds").

13. Schedule B, Rider B.2, to the Debtor's petition, lists an "Escrow Account," account xxxx8062 (the "Scheduled NCB Account") held at NCB with a balance of $938,493.09. Upon information and belief, at least $409,280.59 of the Scheduled NCB Account constitutes the CTS Escrow Funds.

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[1] 14 C.F.R. § 380.24, in relevant part, requires a foreign charter operator, such as CTS, to establish an escrow account with a bank whereby the bank will hold charter participant funds.

14. On or about April 4, 2008, EOS cancelled certain scheduled CTS charter flights that were supposed to occur after April 8, 2008.

15. Due to those cancellations, charter participants which had previously paid for such charter were entitled to refunds of their charter fare.

16. Between April 8th, 2008 and August 31st, 2008, CTS issued refunds to those charter participants whose charters beyond April 8th were cancelled by EOS. In total, CTS issued over $350,000.00 in refunds.

17. Pursuant to 14 C.F.R. § 380.34, escrow funds, in the event of cancellation of a charter, are to be returned directly to the charter participants or to the foreign charter operator in the event the foreign charter operator has already refunded such fares to the charter participants.

18. On July 9, 2008, a demand letter was sent to the Debtor demanding that it authorize the release of the CTS Escrow Funds to CTS as such funds were consumer escrow funds under Title 14 Part 380 of the Code of Federal Regulations. As of the date hereof, the Debtor has failed to authorize the release of the CTS Escrow Funds.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

19. CTS repeats and realleges paragraphs "1" through "18" hereof as if fully set forth herein.

20. Tile 14, Section 380.34 of the Code of Federal Regulations provides that the CTS Escrow Funds are escrow funds and requires that such funds be released to CTS because CTS reimbursed the passengers whose flights were cancelled.

21. The Debtor has no interest in the CTS Escrow Funds as such funds are escrow funds.

22. The CTS Escrow Funds do not constitute property of the Debtor's estate under 11 U.S.C. § 541.

23. By reason thereof, CTS requests that this Court enter judgment declaring the CTS Escrow Funds do not constitute property of the Debtor's estate under 11 U.S.C. § 541.

SECOND CAUSE OF ACTION
(Directing Release of CTS Escrow Funds)

24. CTS repeats and realleges paragraphs "1" through "23" hereof as if fully set forth herein.

25. NCB is in possession of the CTS Escrow Funds.

26. Tile 14, Section 380.34 of the Code of Federal Regulations requires that such funds be released to CTS because CTS reimbursed the passengers whose flights were cancelled.

27. NCB has no interest in the CTS Escrow Funds.

28. The CTS Escrow Funds do not constitute property of the Debtor's estate.

29. By reason thereof, CTS requests that NCB be directed to return the CTS Escrow Funds to CTS.

WHEREFORE, for the foregoing reasons, CTS respectfully requests the following relief:

A. A judgment declaring that the CTS Escrow Funds are not property of the Debtor's estate;

B. an order directing NCB to release the CTS Escrow Funds to CTS; and

C. That the Plaintiff be granted such other and further relief as is just and proper.

Dated: September *19*, 2008
New York, New York

HAHN & HESSEN LLP

/s/ Mark T. Power
Mark T. Power (MP-1607)
Edward L. Schnitzer (ES-6299)

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